

FILED
U.S. DISTRICT COURT

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2005 AUG 26 P 2:46

DISTRICT OF UTAH

CV: DEPUTY CLERK

Attorneys for Plaintiff
The Modellers, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

)
THE MODELLERS, LLC, a Utah Limited)
Liability Company,)

Plaintiff,)

vs.)

)
DECISION ANALYST, INC., a Texas)
Corporation)

Defendant.)

)
**COMPLAINT AND
JURY DEMAND**

Judge Ted Stewart
DECK TYPE: Civil
DATE STAMP: 08/26/2005 e 14:45:55
CASE NUMBER: 2:05CV00716 TS

COMES NOW Plaintiff, The Modellers, LLC, and complains against Decision Analyst, Inc, as follows:

PARTIES

1. Plaintiff, The Modellers, LLC ("MODELLERS"), is a Utah limited liability company having a principal place of business at 4505 South Wasatch Blvd., Suite 270, Salt Lake City, UT 84124. MODELLERS performs market research and advanced mathematical modeling for the market research industry.

2. On information and belief, Defendant, Decision Analyst, Inc. ("DECISION ANALYST"), is a Texas corporation having business offices at 604 Avenue H East, Arlington, Texas, 76011.

JURISDICTION & VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 2201 and 2202. Subject matter jurisdiction is based on federal question because the causes of action herein include declaratory relief in connection with allegations made by DECISION ANALYST that MODELLERS has infringed its copyrights. Supplemental jurisdiction is appropriate under 28 U.S.C. § 1367.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 because DECISION ANALYST is either found in this District or are otherwise subject to personal jurisdiction in this District and because the facts alleged herein occurred in this district.

GENERAL ALLEGATIONS

5. MODELLERS is a Utah company which utilizes advanced mathematical algorithms and analysis in order to assist corporations with making decisions regarding company's products and services.
6. MODELLERS is often hired by companies to determine what modifications can be made to their products, sales approaches, and other business methods to increase sales, improve customer loyalty and good will, and otherwise improve their businesses.
7. In conjunction with its services, company employees and/or customers are often given surveys to elicit information. The elicited information is then analyzed to assist the company in decision making.
8. MODELLERS acts as both a direct supplier of the foregoing services and as a subcontractor to other companies providing similar and related services.
9. MODELLERS has subcontracted data collection work to DECISION ANALYST and likewise has served as a subcontractor to DECISION ANALYST with respect to the analysis of various customer surveys and related data.
10. At no time relevant hereto has DECISION ANALYST sought or obtained from MODELLERS a confidentiality agreement which prohibits MODELLERS from using information disclosed to it.

11. At no time did MODELLERS enter into an oral agreement or understanding that would prevent MODELLERS from using the information contained in a study.

12. In early 2004, MODELLERS made a determination that data from a particular study collected by DECISION ANALYST and analyzed by the MODELLERS might be used to derive new models that would be informative to academics and others in the industry on improvements in decision making analysis.

13. As a matter of professional courtesy, MODELLERS contacted DECISION ANALYST and requested their consent to MODELLERS use of the analysis in question for its presentation.

14. DECISION ANALYST indicated that it had no objection to MODELLERS' use of the data, but requested that MODELLERS mask information that might disclose confidential information about the client and its products.

15. Consistent with DECISION ANALYST's request, MODELLERS masked portions of the presentation to ensure that those receiving the presentation would not be able to deduce confidential information about the client or its product.

16. MODELLERS has expended considerable time, effort and resources in preparing its presentation and presenting it to academics and others in the field.

17. DECISION ANALYST has now objected to MODELLERS use the study data despite its prior consent and has falsely accused MODELLERS of misconduct in communications to academics which work with MODELLERS.

18. DECISION ANALYST has threatened to sue MODELLERS if MODELLERS makes any further use of the questionnaires, data or reports developed as part of the study, thereby creating a case or controversy.

19. DECISION ANALYST has further alleged that MODELLERS' actions constitute copyright infringement.

FIRST CAUSE OF ACTION

(Declaratory Judgment – Copyright Infringement)

20. MODELLERS incorporates and realleges the allegations set forth in Paragraphs 1 through 19 as if fully set forth herein.

21. MODELLERS has not made any unauthorized copies of any questionnaire, data, information, reports or other works of authorship belonging to DECISION ANALYST.

22. For the foregoing reasons, MODELLERS is entitled to a declaratory judgment that the MODELLERS has not infringed any copyrights of DECISION ANALYST.

SECOND CAUSE OF ACTION

(Declaratory Judgment – Right to Use)

23. MODELLERS incorporates and realleges the allegations set forth in Paragraphs 1 through 22 as if fully set forth herein.

24. MODELLERS is entitled to a declaratory judgment that MODELLERS has the right to use any questionnaire, data, information, reports or other works of authorship which it has used in preparation of its presentation to the Advanced Research Technique Forum in Couer d'Alene, Idaho and in any other manner it sees fit.

THIRD CAUSE OF ACTION

(Declaratory Judgment – Estoppel)

25. MODELLERS incorporates and realleges the allegations set forth in Paragraphs 1 through 24 as if fully set forth herein.

26. Prior to preparing its presentation utilizing the materials and data at issue, MODELLERS contacted DECISION ANALYST and received DECISION ANALYST's acknowledgment that it had no objection to MODELLERS' use of the data for academic purposes. The acknowledgment was received from a person having actual or apparent authority to give DECISION ANALYST's consent for MODELLERS to use the materials and data.

27. MODELLERS acted in reliance on DECISION ANALYST's representations as to use of the data and expended considerable time and resources in preparing its presentation.

28. For the foregoing and other reasons, any claim by DECISION ANALYST that MODELLERS cannot use the Data is barred by the doctrine of estoppel.

FOURTH CAUSE OF ACTION

(Tortious Interference with Business Relationships)

29. MODELLERS incorporates and realleges the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.

30. MODELLERS gives presentations to academics and occasionally partners with academics to present advances in modeling techniques.

31. MODELLERS relies on these academics for work, both through direct and indirect referrals.

32. DECISION ANALYST has sent letters to academics with which MODELLERS works in which DECISION ANALYST makes false allegations that MODELLERS has infringed its copyrights, that MODELLERS did not obtain permission to use the questionnaires, reports and data at issue, that MODELLERS has misappropriated confidential information, and that MODELLERS has improperly published confidential information in violation of its agreements and "standard industry practice."

33. On information and belief, DECISION ANALYST sent these letters to academics to discourage them from working with MODELLERS and to damage the relationship between MODELLERS and these academics.

34. DECISION ANALYST knew or should have known that such persons or entities are or were business relations of MODELLERS.

35. On information and belief, DECISION ANALYST has wrongfully, intentionally, maliciously, and recklessly interfered with and disregarded MODELLERS' legitimate business relationships and interests.

36. On information and belief, DECISION ANALYST has, and continues to, tortiously interfere with MODELLERS's business relationships.

PRAYER FOR RELIEF

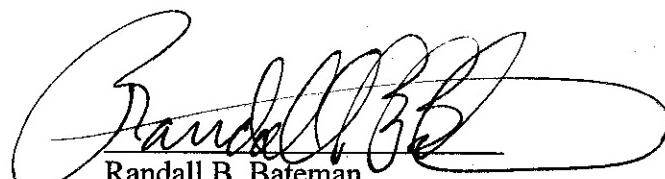
WHEREFORE, MODELLERS prays for judgment against Defendant as follows:

- A. For a declaratory judgment that MODELLERS has not infringed any copyrights owned by DECISION ANALYST.
- B. For a declaratory judgment that MODELLERS has the right to use the data, information, reports, questionnaires and other works of authorship contained in or used for its presentation.
- C. For a declaratory judgment that any claims of DECISION ANALYST are barred by the doctrine of estoppel;
- D. For an award of damages in an amount to be determined at trial;
- F. For an order that DECISION ANALYST, their agents, servants, employees, attorneys, directors, and those persons in active concert or participation with them, be preliminarily and permanently enjoined from publishing statements or making allegations which falsely deny the right of MODELLERS to use the information contained in its presentation.
- G. That DECISION ANALYST be ordered to file with this Court and serve on Plaintiffs within thirty (30) days after service on DECISION ANALYST of any injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner and form in which DECISION ANALYST has complied with the injunction and order of the Court;
- H. That DECISION ANALYST be required to pay prejudgment and post-judgment interest until such awards are paid;
- I. For MODELLERS' attorney's fees and costs under any other law not previously stated;

J. That MODELLERS have such other and further relief as shall seem just and proper to the Court.

DATED this 26th day of August, 2005.

BATEMAN IP LAW GROUP



Randall B. Bateman
Perry S. Clegg

Attorneys for Plaintiff

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

U.S. DISTRICT COURT

I. (a) PLAINTIFFS

THE MODELLERS, LLC
4505 Wasatch Blvd. Suite 270, Salt Lake City, Utah 84124

(b) County of Residence of First Listed Plaintiff Salt Lake County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Randall B. Bateman, BATEMAN IP LAW GROUP
8 East Broadway, Suite 550, Salt Lake City, UT 84111

DEFENDANTS

DECISION ANALYST, INC.

604 Avenue H East, Arlington, Texas 76011 P 2:45

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY: DEPUTY CLERK

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4 <input type="checkbox"/> 4
	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	PROPERTY RIGHTS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (139fI)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900Appeal of Fec Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		
			SOCIAL SECURITY	
			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (139fI)
			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)
			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
				FEDERAL TAX SUITS
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
				<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|----------------------------|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 |
|---|---|--|---|--|---|----------------------------|

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTIONBrief description of cause:
Declaratory Judgement regarding Copyright Claim**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/26/2005

SIGNATURE OF ATTORNEY OF RECORD

Randall B. Bateman

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

Judge Ted Stewart
DECK TYPE: Civil
DATE STAMP: 08/26/2005 @ 14:45:55
CASE NUMBER: 2:05CV00716 TS